

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

LOUDEN, LLC,

Plaintiff,

V.

JUAN MANUEL LOPEZ, and NORMA
LOPEZ.

Defendants.

Case No: C 13-0061 SBA

ORDER REMANDING ACTION

Docket 6

On March 14, 2012, Plaintiff Louden, LLC filed the instant unlawful detainer action against Ignacio J. Pajarillo and Does 1-10 in the Superior Court of California, County of Contra Costa. Compl., Dkt. 1. The complaint seeks possession of certain real property located at 10 Valley Oak Lane, Vallejo, California 94591. See id. Plaintiff obtained ownership of the property through a non-judicial foreclosure. See id. ¶ 5. The occupants of the property, Defendants Juan Manuel Lopez and Norma Lopez (collectively, "Defendants"), appearing pro se, filed a notice of removal alleging that this Court has subject matter jurisdiction over the instant action based on federal question jurisdiction. Notice of Removal at 2, Dkt. 1. On January 14, 2013, Plaintiff filed a motion to remand. Dkt. 6. After reading and considering the papers filed in connection with this matter and being fully informed, the Court hereby GRANTS Plaintiff's motion to remand, for the reasons stated below. The Court, in its discretion, finds this matter suitable for resolution without oral argument. See Fed.R.Civ.P. 78(b); N.D. Cal. Civ. L.R. 7-1(b).

111

1 **I. DISCUSSION**

2 Under 28 U.S.C. § 1441(a), "any civil action brought in a State court of which the
 3 district courts of the United States have original jurisdiction, may be removed by the
 4 defendant or the defendants, to the district court of the United States. . ." 28 U.S.C. §
 5 1441(a). Under 28 U.S.C. § 1331, district courts "have original jurisdiction of all civil
 6 actions arising under the Constitution, laws, or treaties of the United States." Federal
 7 question jurisdiction is presumed to be absent unless the removing party which seeks to
 8 invoke the Court's jurisdiction shows that plaintiff has alleged: (1) a federal cause of
 9 action, Am. Well Works Co. v. Layne & Bowler Co., 241 U.S. 257, 260 (1916) ("a suit
 10 arises under the law that creates the action"); (2) a state cause of action that turns on a
 11 substantial dispositive issue of federal law, Franchise Tax Bd. v. Construction Laborers
 12 Vacation Trust, 463 U.S. 1, 9 (1983); Smith v. Kansas City Title & Trust Co., 255 U.S.
 13 180, 199 (1921); or (3) a state cause of action that Congress has transformed into an
 14 inherently federal cause of action by completely preempting the field of its subject matter,
 15 Avco Corp. v. Aero Lodge No. 735, 390 U.S. 557, 560 (1968).

16 A federal court must satisfy itself of its jurisdiction over the subject matter before
 17 proceeding to the merits of the case. Ruhrgas AG v. Marathon Oil Co., 526 U.S. 574, 577,
 18 583 (1999). In the case of a removed action, a district court must remand the case to state
 19 court "if at any time before the final judgment it appears that the district court lacks subject
 20 matter jurisdiction." 28 U.S.C. § 1447(c); Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir.
 21 1992). "The presumption against removal means that the defendant always has the burden
 22 of establishing that removal is proper." Moore-Thomas v. Alaska Airlines, Inc., 553 F.3d
 23 1241, 1244 (9th Cir. 2009). "[R]emoval statutes are strictly construed against removal."
 24 Luther v. Countrywide Home Loans Servicing, LP, 533 F.3d 1031, 1034 (9th Cir. 2008).
 25 As such, any doubts regarding the propriety of the removal favor remanding the case. See
 26 Gaus, 980 F.2d at 566.

27 Here, the notice of removal alleges that Defendants have been "discriminated"
 28 against by Plaintiff in violation of federal law. See Notice of Removal at 2. Although not

1 entirely clear, Defendants appear to allege that Plaintiff violated federal law by failing to
 2 provide them with a 90-day notice to quit as required by "S. 896 SEC. 702 EFFECT OF
 3 FLORECLOSURE ON PREEXISTING TENANCY." See id. However, this is not a proper
 4 basis for removal based on federal question jurisdiction. Federal subject matter jurisdiction
 5 must be apparent from the face of the complaint, and cannot lie in anticipated defenses.
 6 Specifically, federal courts have jurisdiction over cases in which a "well-pleaded
 7 complaint" establishes that federal law creates the cause of action. Franchise Tax Board,
 8 463 U.S. at 27-28. Defensive matters are not considered to confer federal question
 9 jurisdiction for removal purposes: "a defendant may not remove a case to federal court
 10 unless the plaintiff's complaint establishes that the case 'arises under' federal law." Id. at 10
 11 (emphasis in original). In reviewing the complaint, it is readily apparent that this case does
 12 not satisfy the jurisdictional requirements for federal subject matter jurisdiction. Plaintiff's
 13 complaint is for unlawful detainer and does not assert any federal claims. Thus, it is
 14 facially apparent that this case does not meet the requirements of 28 U.S.C. § 1331 for
 15 federal subject matter jurisdiction.
 16

II. CONCLUSION

17 For the reasons stated above, IT IS HEREBY ORDERED THAT:

- 18 1. Plaintiff's motion to remand is GRANTED.
- 19 2. Defendants' requests to proceed in forma pauperis (Dkt. 2, 3) are DENIED as
moot.
- 20 3. The hearing currently scheduled for April 2, 2012 is VACATED.
- 21 4. The instant action is REMANDED to the Superior Court of California,
County of Solano.
- 22 5. The Clerk shall close this file and terminate all pending matters.

23 IT IS SO ORDERED.

24 Dated: 1/30/13


 25 SAUNDRA BROWN ARMSTRONG
 26 United States District Judge
 27
 28

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA

4 LOUDEN LLC,

5 Plaintiff,

6 v.

7 JUAN MANUEL LOPEZ et al,

8 Defendant.

9 _____ /
10 Case Number: CV13-00061 SBA
11
12 **CERTIFICATE OF SERVICE**
13
14 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
Court, Northern District of California.
15 That on January 31, 2013, I SERVED a true and correct copy(ies) of the attached, by placing said
16 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing
17 said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle
located in the Clerk's office.
18
19
20 Juan Manuel Lopez
21 124 Valley Oak Lane
22 Vallejo, CA 94591
23 Norma Lopez
24 124 Valley Oak Lane
25 Vallejo, CA 94591
26 San Francisco, Ca 94104
27 Dated: January 31, 2013
28 Richard W. Wieking, Clerk
By: Lisa Clark, Deputy Clerk